

UNOFFICIAL COPY



Doc#: 0404142223
Eugene "Gene" Moore Fee: \$56.00
Cook County Recorder of Deeds
Date: 02/10/2004 09:53 AM Pg: 1 of 17

This document was prepared by
and after recording please
return to:

Arnstein & Lehr LLP
120 South Riverside Plaza
Suite 1200
Chicago, Illinois 60606
Attn: Raymond J. Werner, Esq.
11882-0154

7720722 02/10/04

SECOND LOAN MODIFICATION AGREEMENT

THIS SECOND LOAN MODIFICATION AGREEMENT ("**Agreement**") is made by the parties on the dates set forth below their executions but effective as of FEB 10, 2004 (the "**Effective Date**"), by and between LASALLE BANK NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO BANK ONE TRUST COMPANY, N.A., F/K/A BANK ONE, ILLINOIS, N.A. F/K/A FIRST ILLINOIS BANK OF WILMETTE, NOT PERSONALLY BUT AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 26, 1991 AND KNOWN AS TRUST NO. TWB-0994, DENNIS J. O'KEEFE and MARY JO BARRETT (collectively, the "**Borrower**") and CHARTER ONE BANK, N.A. (the "**Lender**") with reference to the following facts.

17
10

A. On or about April 10, 1998, Lender, or a predecessor in interest to Lender, made a One Million Two Hundred Thirty Thousand and No/100 Dollars U. S. (\$1,230,000.00) loan to the Borrower (the "**Loan**"). Lender, or its predecessors in interest have made other loans to Borrower that are listed on **Exhibit B** under the heading "Existing Loans" (all of which loans that are listed under such heading being referred to in this Agreement as the "**Existing Loans**").

B. The Loan is evidenced by that certain Promissory Note in the principal amount of One Million Two Hundred Thirty Thousand and No/100 Dollars U. S. (\$1,230,000.00) payable to the order of the Lender and dated as of April 10, 1998 (the "**Note**"), and is secured by that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement dated as of April 10, 1998, and recorded April 30, 1998 as Document No. 98-352268 in the Office of the Recorder of Cook County, Illinois (the "**Mortgage**"). The Mortgage encumbers the real property and improvements commonly known as 1129-1135 Central Avenue, Wilmette, Illinois and which is legally described on **Exhibit A** and the personal property relating thereto (the "**Property**").

BOX 333-CTI

UNOFFICIAL COPY

C. The Loan has been modified by that certain Loan Modification Agreement dated February 26, 2003 and recorded April 24, 2003 as Document No. 0311411174 in the Office of the Recorder of Cook County, Illinois (the "**First Modification Agreement**") (The Note, the Mortgage, the First Modification Agreement and any other documents and instruments relating to the Loan may hereinafter be referred to collectively as the "**Loan Documents**" and the promissory note, mortgage assignment of leases and rents and other documents and instruments relating to any of the other Loans may hereinafter be referred to collectively as the "**Other Loan Documents**").

D. The Borrower has requested that the Lender make two additional loans to the Borrower or an affiliate of Borrower and which are listed on **Exhibit B** under the heading "New Loans" (the "**New Loans**") (the New Loans and the Existing Loans shall be referred to herein as the "**Loans**"). To induce Lender to make the New Loans, Borrower has offered to encumber the Property and the other property that secures the Existing Loans as security for the Loans and to cause all of the property that secures the repayment of the Existing Loans and the New Loans to constitute a pool of collateral that secures the Loans (the Property, together with the property that secures the other Existing Loans and the property that secures the New Loans shall be referred to collectively herein as the "**Total Property**"). Borrower shall derive substantial benefits from Lender as the result of the making of the New Loans. The Lender has agreed to make the New Loans, but only upon the condition that the Borrower enter into this Agreement and make the modifications to the Loan Documents set forth herein and in various related documents.

NOW, THEREFORE, to induce the Lender to make the New Loans and to confer substantial benefits upon Borrower and its affiliates, and in consideration of the foregoing Recitals, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Lender hereby agree as follows:

1. Recitals and Exhibits. The Recitals set forth above and the Exhibits attached hereto are true and correct and are incorporated into this Agreement by this reference as if they were fully set forth herein.
2. Scope of Agreement. This Agreement solely pertains to and modifies the Loan Documents and Other Loan Documents, and does not affect or alter the terms and conditions of any loan or any other relationship to which the Borrower and Lender may be parties.
3. Definitions. All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Loan Documents.
4. Modification of Mortgage. The terms of the Mortgage are hereby modified in the following respects:

UNOFFICIAL COPY

- 4.1 The following is added as new Section 3.14 of the Mortgage:

Cross Default. Upon (a) the occurrence of a Default under the Mortgage or any of the other Loan Documents, or (b) the occurrence of an Event of Default under any of the Other Loan Documents, then in any such event, the Lender may declare all of the principal, interest and other sums which may be outstanding under the Note and with respect to the other Loans (collectively, the "**Indebtedness**") to be immediately due and payable without further demand, and the Lender may exercise any and all rights and remedies provided in any of the Mortgage, the Loan Documents, or any Other Loan Document, whether or not the Lender exercises its right to accelerate the Indebtedness secured by the Mortgage and the Loan Documents, or the Indebtedness secured to the Lender by any of the Other Loan Documents.

- 4.2 Marshalling of Assets. The following is added as new Section 4.13 of the Mortgage:

Lender shall have the right to determine the order in which any or all of the Total Property shall be subjected to the remedies provided in the Mortgage, any of the Loan Documents and the Other Loan Documents or applicable law. Lender shall have the right to determine the order in which any of the Indebtedness is satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now has or may in the future have a security or other interest in any of the Total Property waives any and all right to require the marshaling of assets or to require that any of the Total Property be sold in the inverse order of alienation, or that any of the Total Property be sold in parcels, or as an entirety, or in any combination, in connection with the exercise of any of the remedies permitted by applicable law, this Mortgage, any of the Loan Documents or any of the Other Loan Documents.

- 4.3 Partial Release. The following is added at the end of Section 1.6 of the Mortgage:

Upon written request of Borrower, Lender shall release the Mortgage as a lien against the Property as security for the Loans other than the Loan (the "**Other Loans**"); provided that: (a) at the time of such payment there is no Event of Default under any of the Loan Documents or the Other Loan Documents, and there is no circumstance which with the

UNOFFICIAL COPY

passage of time, the giving of notice, or both would become an Event of Default under any of the Loan Documents or the Other Loan Documents; and (b) the Borrower shall pay all costs and expenses incurred by Lender in connection with the giving of such release and the gathering and evaluation of the information required or requested by Lender to determine if it is obligated to give such release; and (c) upon the giving of such release, the part of the Total Property that shall remain as security for the Other Loans shall, in the sole determination of the Lender, be then maintaining and be capable of continuing to maintain a debt service coverage ratio of not less than 1.20:1.0, and have a loan-to-value ratio of not more than seventy-five percent (75.0%) based upon the then outstanding balances of principal, interest and other sums payable in connection with the Other Loans and the then values of such parts of the Total Property remaining as security for the Other Loans. Notwithstanding the foregoing, if the indebtedness relating to the Loan is not paid in full, including the payment of any applicable prepayment premium, then in addition to the above conditions, as a condition precedent to Lender's obligation to release the lien of the Mortgage as a lien against the Property as security for the Other Loans, the Property standing alone shall be then maintaining and be capable of continuing to maintain a debt service coverage ratio of not less than 1.20:1.0, and have a loan-to-value ratio of not more than seventy-five percent (75.0%) based upon the then outstanding balance of principal, interest and other sums payable in connection with the Loan and the then value of the Property. Lender shall not be obligated to release the lien of the Loan Documents as security for the Loan unless it receives payment in full of the Indebtedness relating to the Loan, including without limitation any applicable prepayment premium, nor shall Lender be obligated to release any parcel of the Total Property unless and until Borrower has strictly complied with the provisions of this Section. As used in this Section: "**debt service coverage ratio**" shall mean the ratio by which the revenues net of expenses of the part of the Property or Total Property, as the case may be, that shall remain encumbered by the Loan Documents or any Other Loan Documents, as the case may be, after such release exceeds the aggregate of the annual amounts which Borrower must expend to make all of the payments that are to be made to the Lender under the Loan Documents or Other Loan Documents, as the case may be, as they become due and payable without penalty or additional interest; "**revenues**" shall mean all of the rent,

UNOFFICIAL COPY

revenue, proceeds, profits and avails of a parcel of the Property or a parcel of the Total Property, as the case may be, that shall remain encumbered by the Loan Documents or any Other Loan Documents, as the case may be, after such release from any source, but excluding the gross proceeds of any insurance coverages available to Borrower and any award for the condemnation or any conveyance in lieu thereof; and "**expenses**" shall mean the total of the costs and expenses of operating, maintaining, protecting, and repairing a parcel of the Property or a parcel of the Total Property that shall remain encumbered by any Other Loan Documents after such release, as the case may be. Both expenses and revenue shall be determined on a cash rather than accrual basis.

Any release of this Mortgage with respect to any one parcel of the Total Property shall not in any event prevent or impair the Lender from enforcing all of its rights and remedies with respect to any other parcel of the Total Property.

- 4.4 The following is added as new Section 6.21 of the Mortgage:

Cross-Collateral. The Total Property shall secure to Lender the payment of the Indebtedness and the performance of the covenants and agreements set forth in the Mortgage, the Loan Documents and the Other Loan Documents (collectively, the "**Obligations**"), all of which are secured to Lender by the Mortgage without apportionment or allocation of any part or portion of the Property and without apportionment or allocation of any part or portion of the Total Property.

- 4.5 The following is added as new Section 6.22 of the Mortgage:

Selection of Remedies. In addition to the rights and remedies provided to Lender elsewhere in the Mortgage, upon the breach of any covenant or agreement of the Mortgage, the Loan Documents or the Other Loan Documents, Lender shall be allowed to enforce the payment of the Indebtedness and performance of the Obligations, and to exercise all of the rights, remedies and powers provided under the Mortgage or any of the Loan Documents, or the Other Loan Documents, or any of them, or under any provision of law, in one or more proceedings, whether contemporaneous, consecutive or both, to be determined by

UNOFFICIAL COPY

Lender in its sole and absolute discretion. Lender may enforce its rights against any one or more parcel of the Total Property in such order and manner as the Lender may elect in its sole and absolute discretion. The enforcement of the Mortgage, any of the Loan Documents, or any of the Other Loan Documents against any one or more parcel of the Total Property, whether by court action or otherwise, shall not constitute an election of remedies, and shall not prejudice or in any way limit or preclude the enforcement of the Mortgage, the Loan Documents, or the Other Loan Documents, or any of them, through one or more additional proceedings. No judgment obtained by Lender in any one or more enforcement proceedings shall merge the debt secured hereby into such judgment, and all of such debt that shall remain unpaid shall be a continuing obligation of Borrower, not merged into any such judgment. The Mortgage shall secure to Lender the repayment of any amount that Borrower may owe to Lender including without limitation the amount of any judgment, together with any interest thereon, which may be rendered in connection with the enforcement of the Note or the Loan Documents, or any of the Other Loan Documents. Borrower waives and relinquishes any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers or remedies Lender may have under the Mortgage, the Loan Documents, or the Other Loan Documents in any particular manner or order. Lender may bring any action or proceeding, including without limitation foreclosure through judicial proceedings in state or federal courts, and such proceeding may relate to all or any part of the Total Property without regard to the fact that any one or more prior or contemporaneous proceedings have been commenced elsewhere with respect to the same or any other part of the Total Property.

4.6 Application of Proceeds. The following is added at the end of Section 4.5 of the Mortgage:

If Lender forecloses against some but not all of the Total Property, the proceeds of any resulting foreclosure shall be applied prorata against the Loans primarily described in the mortgages that are the subject matter of such foreclosures on the basis of the then outstanding principal balance of such Loans. Any funds thereafter remaining shall be applied to the payment of the Indebtedness relating to the other Loans in such order as the Lender may determine.

UNOFFICIAL COPY

5. Acknowledgments of the Borrower. In order to induce the Lender to forbear in the manner set forth herein and to modify the Loan Documents, the Borrower hereby acknowledges, confirms and agrees that:

5.1 After application of all payments due and owing under the Loan Documents through January 1, 2004, the principal amount of One Million Twenty-Eight Thousand Six Hundred Thirty-Nine and 22/100 Dollars U.S. (\$1,028,639.22) remains outstanding;

5.2 The Lender is under no obligation to make any additional loan advances to the Borrower under and pursuant to the Loan Documents;

5.3 Any and all prior obligations to be performed by the Lender with respect to the Loan Documents have been and remain fully and faithfully satisfied by the Lender; and

5.4 Except as expressly set forth herein, all of the respective representations, warranties and agreements made by the Borrower in the Loan Documents remain in full force and effect, without any defense or right of setoff available thereunder for or on behalf of the Borrower, and the Loan Documents are and continue in full force and effect as the binding obligation of the Borrower with the same validity, priority and effect that they had at the time of their execution and recordation.

6. Representations and Warranties.

6.1 The Borrower hereby represents and warrants to the Lender that:

6.1.1 The Borrower owns the Property in fee simple absolute subject only to those matters set forth in the Mortgage Policy of title insurance delivered to Lender at the time that the Loan was made;

6.1.2 That the Property and its current use are in compliance with all applicable laws, ordinances, rules, regulations and requirements of all governmental authorities, having or purporting to have jurisdiction over the Property, including, without limitation, those laws, ordinances, rules, regulations and requirements pertaining to hazardous wastes, toxic materials, underground storage tanks, zoning, subdivision, building, housing, safety, fire and health, and that the Borrower has not received any notices of violation thereof from any such governmental authority which have not been cured or corrected, the cure or correction thereof having been confirmed in writing by said governmental authority;

6.1.3 That there is no threatened or pending litigation regarding the Borrower or the Property.

UNOFFICIAL COPY

6.2 The Lender hereby represents and warrants to the Borrower that the Lender has not sold, assigned or transferred the Loan Documents.

7. Affixation to Note. A duplicate original of this Agreement shall be affixed to the Note.

8. Construction. The language in all parts of this Agreement in all cases shall be construed simply according to its fair meaning and not strictly for or against any party. All words used herein in the singular number shall extend to and include the plural number. All words used herein in the plural number shall extend to and include the singular number. All words used in any gender, male, female or neuter shall extend to and include all genders as may be applicable in any particular context. Captions and headings contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision of this Agreement. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, among other things, any rule of law or any other statute, legal decision or common law principle that would require interpretation of any ambiguities in this Agreement against the party that has drafted this Agreement are of no application, and are hereby expressly waived by all parties hereto.

9. Governing Laws. This Agreement, and the obligations of the parties hereunder, shall be interpreted, construed, and enforced in accordance with the laws of the State of Illinois.

10. Integration. This Agreement embodies the entire agreement and understanding among the parties hereto relating to the subject matter hereof and supersedes all prior agreements, understandings, representations and discussions relating thereto. Neither this Agreement, nor any of its provisions may be changed, amended, waived or otherwise modified except by an agreement in writing duly executed by, or on behalf of, the party against whom enforcement of any change, amendment, waiver, modification, consent or discharge is sought. The parties fully understand and acknowledge the import of the foregoing provision, and are aware that the law may permit subsequent oral modification of a contract, notwithstanding any contractual language which requires that any such modification be in writing, but the parties hereby fully and expressly intend that the foregoing requirements as to a writing shall be strictly adhered to and strictly interpreted and enforced by any court which may be asked to decide the question.

11. Effect of Other Agreements. Except as expressly set forth herein, all terms and provisions of any and all other written agreements entered into by and among some or all of the parties hereto, or their predecessors in interest, are hereby ratified and confirmed, and shall remain in full force and effect, unmodified in any manner whatsoever. In the event that this Agreement shall be deemed null and void for any reason, the provisions of any and all agreements entered into by and among some or all

UNOFFICIAL COPY

of the parties hereto, or their predecessors in interest, shall continue to control the relationship of the parties.

12. Binding Effect. Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and legal representatives.

13. Counterparts. This Agreement may be executed in counterparts, and the signature pages and acknowledgements thereof may be separated from the body thereof and be assembled into one document by the Lender, and when so assembled and taken together, all so executed shall constitute one agreement, binding on all of the parties, notwithstanding such assembly of this Agreement or that all of the parties are not signatories to the original or the same counterpart signature page.

[The remainder of this page is blank. The executions are on the following page.]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates set forth below, but effective as February 2, 2004.

LENDER:

BORROWER:

CHARTER ONE BANK, N.A.

LASALLE BANK NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO BANK ONE TRUST COMPANY, N.A., F/K/A BANK ONE, ILLINOIS, N.A. F/K/A FIRST ILLINOIS BANK OF WILMETTE, NOT PERSONALLY BUT AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 26, 1991 AND KNOWN AS TRUST NO. TWB-0994

By: [Signature]
Printed Name: TELLER
Its: [Signature]

By: [Signature]
Printed Name: LISA G. WILBURN
Its: TRUST ADMINISTRATION

[Signature]
DENNIS J. O'KEEFE, individually

[Signature]
MARY JO BARRETT, individually

This instrument is executed by LASALLE BANK National Association, not personally but solely as Trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by LASALLE BANK National Association are undertaken by it solely as Trustee, as aforesaid, and not individually, and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against LASALLE BANK National Association by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this instrument.

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, Undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Lisa Wilkum, TRUST Administrator President of LASALLE BANK NATIONAL ASSOCIATION, personally known to me to be the same person whose name, subscribed to the foregoing instrument as such TRUST Administrator President, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said corporation, as Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30 day of ^{January}~~February~~, 2004.

Denys Hernandez
Notary Public

My Commission Expires:

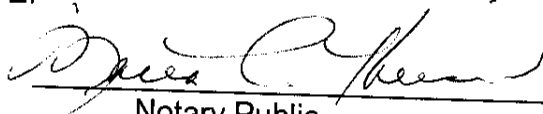
10-17-04



UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 28th day of February, 2004 by DENNIS J. O'KEEFE.



Notary Public

My Commission Expires:



STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 28th day of February, 2004 by MARY JO BARRETT.



Notary Public

My Commission Expires:



UNOFFICIAL COPY

State of Illinois)
) SS:
County of Cook)

I, Maria Garcia, a Notary Public in and for the County and State aforesaid, do hereby certify that Terry Keating, Vice-President President of CHARTER ONE BANK, N.A., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice-President President, appeared before me this day in person and acknowledged that h__ signed and delivered the said instrument as h__ own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2nd day of February, 2004.

Maria Garcia
Notary Public




My Commission Expires:

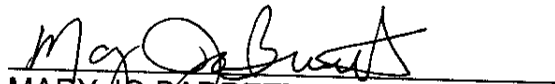
10/01/05

UNOFFICIAL COPY

CONSENT AND REAFFIRMATION OF INDEMNITORS

The undersigned parties, for and in consideration of the execution by Charter One Bank, N.A. of the foregoing Second Loan Modification Agreement and the modification of the Loan Documents as set forth therein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby ratify, confirm and affirm the continuing validity, force and effect of the Indemnity Agreement made by them and dated effective as of April 10, 1998 with respect to such loan, notwithstanding any state of facts that may have occurred as a result of the passage of time since its execution, including, without limitation, the execution by Charter One Bank, N.A. of such Second Loan Modification Agreement and the modification of such loan as therein provided.


DENNIS J. O'KEEFE, individually
Date: February 28, 2004

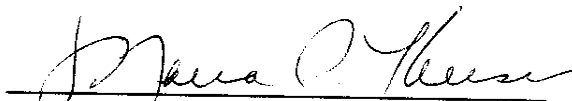

MARY JO BARRETT, individually
Date: February 28, 2004

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 28 day of February, 2004 by DENNIS J. O'KEEFE.



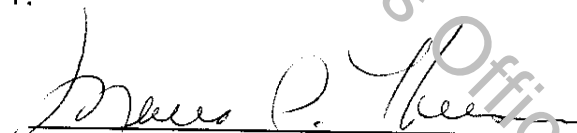
Notary Public



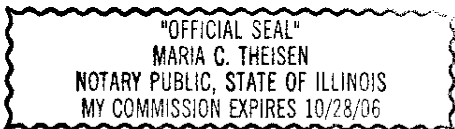
My Commission Expires:

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 28th day of February, 2004 by MARY JO BARRETT.



Notary Public



My Commission Expires:

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LOT A IN NELSON'S CONSOLIDATED OF LOTS 8 AND 9 IN CHILD'S SUBDIVISION OF LOTS 5 AND 6 IN BLOCK 18 IN THE VILLAGE OF WILMETTE TOGETHER WITH THE WEST 1/2 OF LOT 4 IN BLOCK 18 IN THE VILLAGE OF WILMETTE, TOWNSHIP 42 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 1129-35 Central Avenue
Wilmette, Illinois

P.I.N.: 05-34-111-002-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

SCHEDULE OF LOANS

| <u>PROPERTY LOCATION</u> | <u>ORIGINAL PRINCIPAL AMOUNT</u> |
|--|----------------------------------|
| <u>Existing Loans:</u> | |
| 1101-1107 Central Avenue Wilmette, Illinois | \$1,030,000.00 |
| 1129-1135 Central Avenue Wilmette, Illinois | \$1,230,000.00 |
| 725 Washington Street Evanston, Illinois | \$975,000.00 |
| <u>New Loans:</u> | |
| 1337 Fargo Chicago, Illinois | \$6,375,000.00 |
| 4424-2232 North Seeley Avenue Chicago, Illinois | \$1,954,000.00 |
| <u>Total Original Principal Amount</u> | \$11,564,000.00 |